

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 868

Introduced by Mines, 18

Read first time January 5, 2006

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the State Real Estate Commission; to amend
2 sections 81-885.07, 81-885.17, and 81-885.24, Reissue
3 Revised Statutes of Nebraska; to change the membership
4 of the commission to reflect the current congressional
5 districts; to change procedures relating to licenses; to
6 provide additional requirements relating to unfair trade
7 practices; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-885.07, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-885.07 (1) There is hereby created the State Real
4 Estate Commission which shall consist of the Secretary of State,
5 who shall be chairperson of the commission, and six members
6 appointed by the Governor. ~~Four~~ Three of the members of the
7 commission appointed by the Governor shall be active and licensed
8 real estate brokers who have engaged in the real estate business
9 as brokers or associate brokers for not less than five years,
10 which members shall be appointed by the Governor, one from each
11 of the ~~four~~ three congressional districts as the districts were
12 constituted on January 1, ~~1961~~ 2006. The remaining members shall
13 be appointed at large, one of whom shall be representative of
14 the public, ~~and~~ one of whom shall be a licensed real estate
15 salesperson who has engaged in the real estate business as a
16 salesperson for not less than three years, and one of whom shall be
17 an active and licensed real estate broker who has engaged in the
18 real estate business as a broker or associate broker for not less
19 than five years. The member representing the former congressional
20 district 1 on the effective date of this act shall represent
21 congressional district 1 for the balance of his or her term. The
22 member representing the former congressional district 2 on the
23 effective date of this act shall represent congressional district
24 2 for the balance of his or her term. The member representing the
25 former congressional district 3 on the effective date of this act

1 shall become an at-large member for the balance of his or her term.
2 The member representing the former congressional district 4 on the
3 effective date of this act shall represent congressional district 3
4 for the balance of his or her term.

5 (2) At the expiration of the term of any member of
6 the commission, the Governor shall appoint a successor for a
7 term of six years. Any appointed member shall be limited to
8 one six-year term, in addition to any partial term served. In
9 the event of a vacancy on the commission, the Governor shall
10 fill such vacancy by appointing a member to serve during the
11 unexpired term of the member whose office has become vacant. In
12 the absence of the chairperson, the senior member of the commission
13 in point of service present shall serve as presiding officer. Not
14 less than four members of the commission must be present at any
15 official meeting of the commission. The action of the majority
16 of the members of the commission shall be deemed the action of
17 the commission. No appointed person may act as a member of the
18 commission while holding any other elective or appointive state or
19 federal office.

20 (3) Each member of the commission shall receive as
21 compensation for each day actually spent on official duties at
22 scheduled meetings the sum of one hundred dollars and actual
23 and necessary expenses incurred in the performance of his or her
24 official duties.

25 (4) The commission shall employ a director who shall keep

1 a record of all the proceedings, transactions, communications, and
2 official acts of the commission, be custodian of all the records
3 of the commission, and perform such other duties as the commission
4 may require. The director shall call a meeting of the commission at
5 his or her discretion or upon the direction of the chairperson or
6 upon a written request of two or more members of the commission.
7 The commission may employ such other employees as may be necessary
8 to properly carry out the Nebraska Real Estate License Act, fix
9 the salaries of such employees, and make such other expenditures
10 as are necessary to properly carry out the act. The office of the
11 commission shall be maintained in Lincoln and all files, records,
12 and property of the commission shall remain in such office. Neither
13 the director nor any employee of the commission may be an officer
14 or paid employee of any real estate association or group of real
15 estate dealers or brokers.

16 (5) The commission may adopt and promulgate rules and
17 regulations relating to the administration of but not inconsistent
18 with the act.

19 (6) The commission may conduct or assist in conducting
20 real estate institutes and seminars and incur and pay the necessary
21 expenses in connection therewith, which institutes or seminars
22 shall be open to all licensees.

23 (7) The commission may charge reasonable fees for
24 services it renders, not to exceed the actual costs thereof, except
25 as otherwise provided in the act. The fees established by the

1 commission pursuant to the act shall be established at the level
2 necessary to meet expenditures of the commission as approved by the
3 Legislature and to provide a sufficient cash fund balance.

4 Sec. 2. Section 81-885.17, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 81-885.17 (1)(a) A nonresident of this state who is
7 actively engaged in the real estate business, who maintains a
8 place of business in his or her resident regulatory jurisdiction,
9 and who has been duly licensed in that regulatory jurisdiction
10 to conduct such business in that regulatory jurisdiction may, in
11 the discretion of the commission, be issued a nonresident broker's
12 license.

13 (b) A nonresident salesperson employed by a broker
14 holding a nonresident broker's license may, in the discretion
15 of the commission, be issued a nonresident salesperson's license
16 under such nonresident broker.

17 (c) A nonresident who becomes a resident of the State
18 of Nebraska and who holds a broker's or salesperson's license
19 in his or her prior resident regulatory jurisdiction shall be
20 issued a resident broker's or salesperson's license upon filing an
21 application, paying the applicable license fee, complying with the
22 criminal history record information check under subsection (4) of
23 this section, and filing the affidavit required by subsection (7)
24 of this section.

25 (2) Obtaining a nonresident broker's license shall

1 constitute sufficient contact with this state for the exercise of
2 personal jurisdiction over the licensee in any action arising out
3 of the licensee's activity in this state.

4 (3) Prior to the issuance of any license to any
5 nonresident, he or she shall file with the commission a duly
6 certified copy of the license issued to the applicant by the
7 resident regulatory jurisdiction and pay to the commission the
8 nonresident license fee as provided in section 81-885.14 for the
9 obtaining of a broker's or salesperson's license.

10 (4) An applicant for an original nonresident broker's
11 or salesperson's license shall be subject to fingerprinting and a
12 check of his or her criminal history record information maintained
13 by the Federal Bureau of Investigation through the Nebraska State
14 Patrol. Each applicant shall furnish to the Nebraska State Patrol
15 a full set of fingerprints to enable a criminal background
16 investigation to be conducted. The applicant shall request that
17 the Nebraska State Patrol submit the fingerprints to the Federal
18 Bureau of Investigation for a national criminal history record
19 check. The applicant shall pay the actual cost, if any, of the
20 fingerprinting and check of his or her criminal history record
21 information. The applicant shall authorize release of the national
22 criminal history record check to the commission. The criminal
23 history record information check shall be completed within ninety
24 days preceding the date the original application for a license is
25 received in the commission's office, and if not, the application

1 shall be returned to the applicant.

2 (5) Nothing in this section shall preclude the commission
3 from entering into reciprocal agreements with other regulatory
4 jurisdictions when such agreements are necessary to provide
5 Nebraska residents authority to secure licenses in other regulatory
6 jurisdictions.

7 (6) Nonresident licenses granted as provided in this
8 section shall remain in force for only as long as the requirements
9 of issuing and maintaining a license are met unless (a) suspended
10 or revoked by the commission for just cause or (b) lapsed for
11 failure to pay the annual renewal fee.

12 (7) Prior to the issuance of any license to a nonresident
13 applicant, an affidavit shall be filed by the applicant with
14 the commission certifying that the applicant has reviewed and is
15 familiar with the Nebraska Real Estate License Act and the rules
16 and regulations of the commission and agrees to be bound by the
17 act, rules, and regulations. Within ninety days after the issuance
18 of a license to a nonresident applicant, the applicant shall
19 successfully complete a three-hour class approved by the commission
20 specific to the Nebraska Real Estate License Act and the law of
21 agency relationships enumerated in sections 76-2401 to 76-2430.

22 Sec. 3. Section 81-885.24, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 81-885.24 The commission may, upon its own motion,
25 and shall, upon the sworn complaint in writing of any person,

1 investigate the actions of any broker, associate broker,
2 salesperson, or subdivider and may censure the licensee or
3 certificate holder, revoke or suspend any license or certificate
4 issued under the Nebraska Real Estate License Act, or enter into
5 consent orders, whenever the license or certificate has been
6 obtained by false or fraudulent representation or the licensee or
7 certificate holder has been found guilty of any of the following
8 unfair trade practices:

9 (1) Refusing because of religion, race, color, national
10 origin, ethnic group, sex, familial status, or disability to show,
11 sell, or rent any real estate for sale or rent to prospective
12 purchasers or renters;

13 (2) Intentionally using advertising which is misleading
14 or inaccurate in any material particular or in any way
15 misrepresents any property, terms, values, policies, or services
16 of the business conducted;

17 (3) Failing to account for and remit any money coming
18 into his or her possession belonging to others;

19 (4) Commingling the money or other property of his or her
20 principals with his or her own;

21 (5) Failing to maintain and deposit in a separate
22 non-interest-bearing checking account all money received by a
23 broker acting in such capacity, or as escrow agent or the temporary
24 custodian of the funds of others, in a real estate transaction
25 unless all parties having an interest in the funds have agreed

1 otherwise in writing;

2 (6) Accepting, giving, or charging any form of
3 undisclosed compensation, consideration, rebate, or direct profit
4 on expenditures made for a principal;

5 (7) Representing or attempting to represent a real estate
6 broker, other than the employer, without the express knowledge and
7 consent of the employer;

8 (8) Accepting any form of compensation or consideration
9 by an associate broker or salesperson from anyone other than his or
10 her employing broker without the consent of his or her employing
11 broker;

12 (9) Acting in the dual capacity of agent and undisclosed
13 principal in any transaction;

14 (10) Guaranteeing or authorizing any person to guarantee
15 future profits which may result from the resale of real property;

16 (11) Placing a sign on any property offering it for sale
17 or rent without the written consent of the owner or his or her
18 authorized agent;

19 (12) Offering real estate for sale or lease without the
20 knowledge and consent of the owner or his or her authorized agent
21 or on terms other than those authorized by the owner or his or her
22 authorized agent;

23 (13) Inducing any party to a contract of sale or lease
24 to break such contract for the purpose of substituting, in lieu
25 thereof, a new contract with another principal;

1 (14) Negotiating a sale, exchange, listing, or lease of
2 real estate directly with an owner or lessor if he or she knows
3 that such owner has a written outstanding listing contract in
4 connection with such property granting an exclusive agency or an
5 exclusive right to sell to another broker or negotiating directly
6 with an owner to withdraw from or break such a listing contract
7 for the purpose of substituting, in lieu thereof, a new listing
8 contract;

9 (15) Discussing or soliciting a discussion of, with an
10 owner of a property which is exclusively listed with another
11 broker, the terms upon which the broker would accept a future
12 listing upon the expiration of the present listing unless the owner
13 initiates the discussion;

14 (16) Violating any provision of sections 76-2401 to
15 76-2430;

16 (17) Soliciting, selling, or offering for sale real
17 estate by offering free lots or conducting lotteries for the
18 purpose of influencing a purchaser or prospective purchaser of real
19 estate;

20 (18) Providing any form of compensation or consideration
21 to any person for performing the services of a broker, associate
22 broker, or salesperson who has not first secured his or her license
23 under the Nebraska Real Estate License Act unless such person is
24 (a) a nonresident who is licensed in his or her resident regulatory
25 jurisdiction or (b) a citizen and resident of a foreign country

1 which does not license persons conducting the activities of a
2 broker and such person provides reasonable written evidence to
3 the Nebraska broker that he or she is a resident citizen of that
4 foreign country, is not a resident of this country, and conducts
5 the activities of a broker in that foreign country;

6 (19) Failing to include a fixed date of expiration in any
7 written listing agreement and failing to ~~leave~~ deliver within a
8 reasonable time a copy of the agreement ~~with~~ to the principal;

9 (20) Failing to deliver within a reasonable time a
10 completed and dated copy of any purchase agreement or offer to buy
11 or sell real estate to the purchaser and to the seller;

12 (21) Failing by a broker to deliver to the seller in
13 every real estate transaction, at the time the transaction is
14 consummated, a complete, detailed closing statement showing all
15 of the receipts and disbursements handled by such broker for
16 the seller, failing to deliver to the buyer a complete statement
17 showing all money received in the transaction from such buyer and
18 how and for what the same was disbursed, and failing to retain true
19 copies of such statements in his or her files;

20 (22) Making any substantial misrepresentations;

21 (23) Acting for more than one party in a transaction
22 without the knowledge of all parties for whom he or she acts;

23 (24) Failing by an associate broker or salesperson to
24 place, as soon after receipt as practicable, in the custody of his
25 or her employing broker any deposit money or other money or funds

1 entrusted to him or her by any person dealing with him or her as
2 the representative of his or her licensed broker;

3 (25) Filing a listing contract or any document or
4 instrument purporting to create a lien based on a listing contract
5 for the purpose of casting a cloud upon the title to real estate
6 when no valid claim under the listing contract exists;

7 (26) Violating any rule or regulation adopted and
8 promulgated by the commission in the interest of the public and
9 consistent with the Nebraska Real Estate License Act;

10 (27) Failing by a subdivider, after the original
11 certificate has been issued, to comply with all of the requirements
12 of the Nebraska Real Estate License Act;

13 (28) The broker or salesperson has been convicted of a
14 felony or entered a plea of guilty or nolo contendere to a felony
15 charge;

16 (29) Demonstrating negligence, incompetency, or
17 unworthiness to act as a broker, associate broker, or salesperson,
18 whether of the same or of a different character as otherwise
19 specified in this section; or

20 (30) Inducing or attempting to induce a person to
21 transfer an interest in real property, whether or not for monetary
22 gain, or discouraging another person from purchasing real property,
23 by representing that (a) a change has occurred or will or may occur
24 in the composition with respect to religion, race, color, national
25 origin, ethnic group, sex, familial status, or disability of the

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1 owners or occupants in the block, neighborhood, or area or (b) such
2 change will or may result in the lowering of property values, an
3 increase in criminal or antisocial behavior, or a decline in the
4 quality of schools in the block, neighborhood, or area.

5 Sec. 4. Original sections 81-885.07, 81-885.17, and
6 81-885.24, Reissue Revised Statutes of Nebraska, are repealed.